

## CHAPTER 02 – ELECTION PROTESTS

### SECTION .0100 – ELECTION PROTESTS

<b>08 NCAC 02 .0101</b>	<b>COMPLAINTS CONCERNING CONDUCT OF ELECTIONS</b>
<b>08 NCAC 02 .0102</b>	<b>PRELIMINARY CONSIDERATION OF COMPLAINT BY COUNTY BOARD</b>
<b>08 NCAC 02 .0103</b>	<b>SCHEDULING AND NOTICE OF COUNTY BOARD HEARING</b>
<b>08 NCAC 02 .0104</b>	<b>CONDUCT OF HEARING BY COUNTY BOARD</b>
<b>08 NCAC 02 .0105</b>	<b>DECISION BY COUNTY BOARD</b>
<b>08 NCAC 02 .0106</b>	<b>NOTICE AND PERFECTION OF APPEAL</b>
<b>08 NCAC 02 .0107</b>	<b>CONSIDERATION OF APPEAL BY STATE BOARD</b>
<b>08 NCAC 02 .0108</b>	<b>STATE BOARD AUTHORITY OVER ELECTION PROTESTS</b>

*History Note:* Authority G.S. 163-22; 163-22.1  
Eff. March 12, 1976;  
Amended Eff. November 1, 1984;  
Temporary Repeal Eff. April 15, 2002;  
Repealed Eff. August 1, 2004.

#### **08 NCAC 02 .0109 NO FRIVOLOUS PROTESTS**

*History Note:* Authority G.S. 163-22; 163-22.1;  
Eff. March 12, 1976;  
Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

#### **08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS**

- (a) The county board shall deliver any filed election protest, including any attachments, to the State Board as follows:
- (1) if hand delivered or mailed, within 24 hours after the election protest is filed;
  - (2) if faxed, the same day the election protest is filed; or
  - (3) if emailed, the same day the election protest is filed.
- (b) The county board shall not consider election protests not timely filed, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board office for consideration under G.S. 163-182.12. For the purposes of this Rule, timely means within time specified in G.S. 163-182.9.
- (c) Upon receipt of a timely filed election protest, the county board of elections shall hold a preliminary consideration hearing in accordance with G.S. 163-182.10. If the county board determines that a hearing is necessary, the board shall set the hearing no later than ten business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause as determined by the county board. Only for good cause and upon informing the State Board office, may a hearing be set on or continued to a weekend day or holiday. Examples of good cause include, but are not limited to, procuring documentary evidence or securing witness testimony necessary to conclude the hearing.
- (d) Notice of hearing as required by G.S. 163-182.10(b) shall be given at least three business days prior to the day of the hearing, and the notice required shall be notice by any means chosen by the county board. Any oral notice of the hearing shall be followed with a written notice sent prior to the hearing date. The oral notice shall constitute valid notice meeting the three-day notice requirement.
- (e) Required procedures include:
- (1) Upon request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in the North Carolina Rules of Civil Procedure.
  - (2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. 163-182.10(d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.

- (3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal. Transcripts of hearings shall be kept for two years after their creation.
  - (4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the county board.
- (f) A county board of elections shall timely hear and decide all protests, unless:
- (1) the protest is administratively dismissed pursuant to 08 NCAC 02 .0114; or
  - (2) the county board of elections receives alternative instructions from the State Board issued under G.S. 163-182.12.

If a protest does not concern the manner in which votes were counted or results tabulated, a county board of elections shall not delay canvass in order to hear the protest. A protest that alleges the occurrence of an election law violation regarding an insufficient number of votes to change the outcome of a contest within the jurisdiction of a county board of elections shall not delay canvass by a county board of elections.

*History Note: Authority G.S. 163-22; 163-182.10;  
 Temporary Adoption Eff. April 15, 2002;  
 Eff. August 1, 2004;  
 Readopted Eff. September 1, 2018;  
 Amended Eff. November 1, 2020.*

**08 NCAC 02 .0111 ELECTION PROTEST FORM**

All persons bringing an election protest under Article 15A shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163-182.9(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

**ELECTION PROTEST**

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

**PROTESTOR**

1. Provide your preferred contact information:

Name: \_\_\_\_\_ County of Residence: \_\_\_\_\_  
 Email: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel?  Yes  No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

- Candidate for the office of \_\_\_\_\_
- Registered voter eligible to participate in the protested election contest
- Neither of the above\*

*\*If you select this option, you are not eligible to file a protest.*

**PROTEST SCOPE**

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

<b>Protested Contest(s)</b>	<b>Current Vote Margin</b> <small>(subtract runner-up totals from apparent winner's totals)</small>
<b>Example: Mayor of Townsville</b>	<b>75</b>

5. This protest alleges (*select at least one*):

- A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

**FACTUAL BASIS & LEGAL ARGUMENT**

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

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7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple individuals, summarize the facts of which the individual has personal knowledge.

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8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

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**RELIEF**

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

- The electoral outcome of the protested contest(s) will change.
- The electoral outcome of the protested contest(s) will not change.
- I am uncertain whether the outcome of the contest(s) will change.
- Other \_\_\_\_\_

10. What relief do you seek?

- Correct the vote count
- A new election
- Other: \_\_\_\_\_

**ASSISTANCE**

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

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Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. *See* 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- Yes
- No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- Yes
- No

**AFFECTED PARTIES & SERVICE**

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at [www.ncsbe.gov](http://www.ncsbe.gov).

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means

affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

<i>Affected Party</i>	<i>Service Address</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**PROTESTOR CERTIFICATION**

15. By signing this protest application, you affirm the following:

I, \_\_\_\_\_ (*full name*), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(*initial*)

- \_\_\_\_\_ I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- \_\_\_\_\_ My protest must originate with a filing at the county board of elections.
- \_\_\_\_\_ I must timely serve all Affected Parties.
- \_\_\_\_\_ I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- \_\_\_\_\_ It is a crime to interfere unlawfully with the conduct and certification of an election.
- \_\_\_\_\_ It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- \_\_\_\_\_ The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

**Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.**

Signature of Protestor: \_\_\_\_\_ Date: \_\_\_\_\_

(*This signature must be signed in the presence of a notary*)

State of North Carolina, County of \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official Seal)

\_\_\_\_\_  
Official Signature of Notary

\_\_\_\_\_, Notary Public  
Printed Name

My commission expires: \_\_\_\_\_

.....  
Date/Time Filed with County Board

\_\_\_\_\_  
(completed by the county board)

**NOTE:** The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:

Protestor Name: \_\_\_\_\_ Protestor County: \_\_\_\_\_
Attorney Name: \_\_\_\_\_
Attorney Email: \_\_\_\_\_ Attorney Phone: \_\_\_\_\_

I am a member in good standing with the North Carolina State Bar
I am not licensed to practice law in North Carolina but am a member in good standing in \_\_\_\_\_ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: \_\_\_\_\_
Bar Number: \_\_\_\_\_

I (choose one) am am not:
Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.

Attorney Signature \_\_\_\_\_ Date \_\_\_\_\_

History Note: Authority G.S. 163-22; 163-182.9;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018;
Amended Eff. November 1, 2020.

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board of election protest decision must use the following form available on the State Board of Elections' website:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS
(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11 (a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The

county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

5. State the date of the county board hearing

6. State the legal and factual basis for your appeal.

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

9. What relief do you seek? Why?

10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

11. Besides a copy of the original protest and the county board decisions, this appeal includes \_\_\_ pages of additional answers and \_\_\_ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing

Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

*History Note: Authority G.S. 163-22; 163-182.11;  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004;  
Readopted Eff. June 1, 2019.*

**08 NCAC 02 .0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS**

- (a) Eligibility to vote in a new election ordered in accordance with G.S. 163-182.13 shall be governed by G.S. 163-82.6.
- (b) The date of any new non-municipal election shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election.
- (c) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.



*History Note: Authority G.S. 163-22; 163-182.13(c);  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004;  
Readopted Eff. June 1, 2019.*

**08 NCAC 02 .0114 DISMISSAL OF IMPROPER PROTEST FILINGS**

(a) The county board of elections shall dismiss any matter purporting to arise as an election protest under G.S. 163-182.9 on the following bases:

- (1) The matter fails to contest the manner in which votes were counted or results tabulated, or fails to allege a violation of election law or irregularity or misconduct sufficient to cast doubt on the results of the election;
- (2) The individual submitting the matter was neither a registered voter eligible to participate in the protested contest within the county nor a candidate for nomination or election in the protested contest;
- (3) The matter was not filed in accordance with G.S. 163-182.9 or was not filed on the form prescribed in 08 NCAC 02 .0111;
- (4) The protest is duplicative or was made for the purpose of delay;
- (5) The protest filing, taking into account the totality of the circumstances, fails to include evidence which, if true, substantiates the probable occurrence of an outcome-determinative defect in the manner in which votes were counted or results tabulated, or the probable occurrence of an outcome-determinative violation of election law, irregularity, or misconduct; or
- (6) The matter, including the initial filing and all subsequent oral or written submissions, fails to allege facts sufficient to constitute substantial evidence of the occurrence of an outcome-determinative violation of election law, irregularity, or misconduct.

The State Board may consider protests in accordance with G.S. 163-182.12.

(b) If the matter is filed with a county board of elections, the county director of elections shall review the allegations and evidence presented in or attached to the filing. If the director of elections finds that the filing must be dismissed pursuant to Paragraph (a) of this Rule, the director shall transmit his or her administrative recommendation that the matter be dismissed, citing applicable defects and the requirements of this Rule. The director's administrative recommendation shall be transmitted in writing to the county board members and the executive director of the State Board no later than two business days after the matter was filed. The director of elections shall confirm that the county board members have received all filings and the director's administrative recommendation before proceeding to issue a notice of dismissal. Nothing in this Paragraph shall delay the county board of elections in proceeding to consider the protest as required under . G.S. 163-182.10. If, after two calendar days following the transmission required under this Paragraph, neither a county board member nor the executive director of the State Board has raised any oral or written objection to the county director's recommendation for administrative dismissal, the county director shall issue a written notice of administrative dismissal to the individual(s) who has filed the matter. The notice shall:

- (1) Be sent by certified mail or commercial courier such that the date of delivery may be verified, unless the recipient has agreed in writing to receive notice by electronic means;
- (2) State that the matter was provided to the county board of elections members, but will not be heard by the county board;
- (3) State that the matter has been dismissed administratively, citing this rule and all applicable bases listed in Paragraph (b) of this Rule; and
- (4) Enclose an appeal form required under Paragraph (d) of this Rule.

If within two calendar days, any county board member or the executive director of the State Board raises any oral or written objection to the recommendation for administrative dismissal by the county director, the county board of elections shall proceed to hear the matter. An objection raised under this Subparagraph shall in no way affect or limit the county board of elections' authority to dismiss the matter under Paragraph (b) of this Rule or any other basis permitted by law.

(c) Individuals subject to an administrative dismissal entered by the director of elections may appeal the decision to the executive director of the State Board. All appeals brought under this Paragraph shall be in writing on a form prescribed under this Paragraph (available at ncsbe.gov) and must be received by the State Board office no later than five business days after receipt of the written notice of administrative dismissal from the county director. The State Board shall be deemed to have received the written appeal when it receives the physical form required under this Paragraph either by U.S. mail, courier service, or hand delivery. All appeals shall be made on a form that includes the following statements:

- (1) I am appealing from an administrative dismissal of a matter that I filed at the [county name] Board of Elections on [date].
- (2) I received an administrative notice of dismissal on [date].
- (3) I have enclosed a copy of my original materials filed with the county board of elections.  
 YES  NO
- (4) I have enclosed a copy of the written notice of administrative dismissal.  
 YES  NO
- (5) This matter should be heard for the following reasons:

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- (6) I request notice of any action on this appeal at the following address:

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

(d) The executive director of the State Board shall inspect all appeals filed under Paragraph (c) of this Rule. Within two business days after the receipt of an appeal, the executive director shall transmit a copy of the appeal to the State Board members along with a written statement indicating the executive director's administrative determination either to grant or to deny the appeal.

- (1) If the executive director's administrative determination is to grant the appeal, the executive director shall issue written notice to the county board of elections and to the appealing party indicating that the matter is remanded to the county board of elections for a hearing. The executive director's administrative determination under this Subparagraph shall in no way affect the county board of elections' authority to dismiss the matter under Paragraph (a) of this Rule or any other basis permitted by law.
- (2) If the executive director's administrative determination is to deny the appeal, but any State Board member raises any oral or written objection within three calendar days, the executive director shall grant the appeal, issue a written notice, and remand the matter to the county board of elections. If no State Board member raises any oral or written objection within three calendar days, the executive director shall issue a written notice to the appealing party and to the county board of elections stating that the appeal is denied. Dismissal under this Subparagraph shall be considered a final agency action for purposes of seeking judicial review.

(e) If the matter is filed with the State Board, the executive director of the State Board shall proceed in a manner outlined in Paragraph (b) of this Rule, including distribution to the State Board members, the opportunity to interpose an objection, and the issuance of notice, except that there shall be no right of appeal under Paragraph (c) of this Rule and that the executive director may administratively remand the matter for hearing by the county board of elections in the manner prescribed under Subparagraph (d) of this Rule.

*History Note: Authority G.S. 163-22; 163-182.12;  
 Eff. October 1, 2018;  
 Amended Eff. November 1, 2020.*